

CLERK: Nothing further on that bill, Mr. President.

SPEAKER WITHEM: LB 609.

CLERK: LB 609, Senator Wesely would move to return the bill. (Wesely amendment, FA189, appears on page 1969 of the Legislative Journal.)

SPEAKER WITHEM: Senator Wesely.

SENATOR WESELY: Doesn't seem to be a lot of consent on consent calendar this morning, but I will just be very brief, Mr. Speaker, members. I put the motion up to bring to your attention that there is an Attorney General's Opinion. I'm not sure where it is in the book, in the Journal that we have, but if you have that page reference I'd appreciate it. You may want to look at that. The only thing I'm trying to do is to note for you that I did have a concern. This is the fund that would then go now for the first time to private airport for public use. I'm not sure what the terminology is, Senator Hartnett. But I was concerned about again crossing that line between public funds used for private purposes so I did ask for an Attorney General's Opinion. What they found was under the constitution, the lending of the credit of the state, which is what I asked about that that they didn't think there was a constitutional problem. But they did note and I thought I would like to call this to your attention that, and I'll quote from this, that the bill may be challenged as an expenditure of state funds for private purposes. And I think as a Legislature we need to keep this in mind that our responsibility is pretty strong in this regard. Let me read the last paragraph of the opinion for you to remind us about our responsibility in regard to the public fund, public purpose doctrine. We do note that LB 609 might be challenged under the public purpose doctrine as allowing a private entity to use state funds or property for a direct benefit to private industry with only remote or indirect benefit to the public. Although Nebraska Revised Statute, Section 3-147 as amended makes a general statement as to public purpose, the direct benefit to the public is not apparent. We also point out, as previously discussed, that the Nebraska Supreme Court has held that what constitutes a public purpose is primarily for the Legislature to determine and all doubts are generally resolved in favor of the Legislature. So the key point I want to make is that what we decide here, as to what is a public purpose or what isn't a public purpose, is pretty well regarded